

## 48A C.J.S. Judges § 364

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### X. Special or Substitute Judges and Like Judicial Officers

#### C. Authority, Powers, and Duties of Special or Substitute Judge

## § 364. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  25(1)

### **The nature of the authority of a special, substitute, or like judge depends on the purpose of his or her selection.**

The nature and duration of the authority of a special, substitute, or like judge depends on the purpose of his or her selection, whether he or she has been selected to try a particular case or cases, or to substitute for the regular judge in all judicial matters that might come before the court.<sup>1</sup> While the legislature may grant authority to special or substitute judges within constitutional bounds,<sup>2</sup> authority in excess of that permitted by constitutional restrictions may not be granted.<sup>3</sup> The statutory authority of a substitute judge cannot be limited by the regular judge,<sup>4</sup> and, where a statute fixes the time during which the special judge shall act, an attempt to limit such time is without force and effect.<sup>5</sup>

Generally speaking, the powers and jurisdiction of special or substitute judges are limited to those prescribed by law,<sup>6</sup> and they may not act beyond the granted powers,<sup>7</sup> any actions taken in excess of their authority being erroneous<sup>8</sup> or void.<sup>9</sup> Further, the terms of an appointment agreement,<sup>10</sup> or of the assignment or appointment order,<sup>11</sup> may control the extent of the judge's authority. Also, a special or substitute judge is without jurisdiction to act prior to the date he or she assumes office,<sup>12</sup> but such a judge has jurisdiction to hear all matters requiring action during the time for which he or she has been designated regardless of whether they were pending in court at the time the designation was made or were filed at a later date.<sup>13</sup>

### ***Validity of appointment.***

Unless there is consent of the parties, a special or substitute judge not validly appointed lacks jurisdiction to hear a matter.<sup>14</sup> If the election of a special judge was not in the manner prescribed by law, the special judge has no judicial power, thus making

his or her acts coram non judge, and on direct attack, the decree must be set aside as void requiring a remand for trial as if it had never been tried.<sup>15</sup> A judgment rendered by a special judge who is not appointed in accordance with constitutional and statutory requirements is a nullity.<sup>16</sup>

***Transfer to another county.***

A judge from one county who has been appointed as a special judge in a second county for a limited purpose has territorial jurisdiction to transfer the case to his or her "home" county.<sup>17</sup>

***Local rules.***

A visiting judge is bound by the local rules of the district in which he or she is presiding.<sup>18</sup>

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**Footnotes**

- 1 U.S.—U.S. v. Boswell, 565 F.2d 1338 (5th Cir. 1978).  
Okla.—Colpitt v. Herrington, 1974 OK CIV APP 5, 519 P.2d 553 (Ct. App. Div. 1 1974).  
As to power of special or substitute judge to:  
Hold special term, see C.J.S., Courts § 161.  
Punish for contempt, see C.J.S., Contempt §§ 85, 86.  
**Authority to accept guilty plea**  
Wash.—State v. Duran-Madrigal, 163 Wash. App. 608, 261 P.3d 194 (Div. 1 2011), review denied, 173 Wash. 2d 1015, 272 P.3d 246 (2012).  
**Authority to adopt magistrate's grant of summary judgment**  
Ohio—Ramos v. Khawli, 181 Ohio App. 3d 176, 2009-Ohio-798, 908 N.E.2d 495 (7th Dist. Mahoning County 2009).  
**Authority to impose sanctions**  
Ohio—Bellamy v. Montgomery, 188 Ohio App. 3d 76, 2010-Ohio-2724, 934 N.E.2d 403 (10th Dist. Franklin County 2010).
- 2 U.S.—Allen v. Reardon, 457 F. Supp. 966 (D. Mass. 1978).  
Okla.—Colpitt v. Herrington, 1974 OK CIV APP 5, 519 P.2d 553 (Ct. App. Div. 1 1974).
- 3 N.C.—Shepard v. Leonard, 223 N.C. 110, 25 S.E.2d 445 (1943).
- 4 Mont.—State ex rel. King v. District Court of Eleventh Judicial Dist., 95 Mont. 400, 26 P.2d 966 (1933).
- 5 Ind.—Railroad School Tp., Starke County v. Christensen, 88 Ind. App. 86, 169 N.E. 533 (1928).
- 6 U.S.—Eagle Books, Inc. v. Ritchie, 455 F. Supp. 64 (D. Utah 1978).  
**Statutory basis for adjudicating disputed title in ejectment action**  
Okla.—Rogers v. Bailey, 2011 OK 69, 261 P.3d 1150 (Okla. 2011).

**Jurisdiction of successor to substitute judge**

Mont.—*McLeod v. McLeod*, 126 Mont. 32, 243 P.2d 321 (1952).

7 Okla.—*Dickson v. Winslow*, 1977 OK 97, 565 P.2d 12 (Okla. 1977).

8 Tex.—*In re Amos*, 397 S.W.3d 309 (Tex. App. Dallas 2013).

9 Tex.—*In re Richardson*, 252 S.W.3d 822 (Tex. App. Texarkana 2008).

10 Cal.—*Gridley v. Gridley*, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).

11 Tex.—*Hull v. South Coast Catamarans, L.P.*, 365 S.W.3d 35 (Tex. App. Houston 1st Dist. 2011).

**No limitation in order of assignment precluding acceptance of plea**

Ga.—*Surh v. State*, 303 Ga. App. 380, 693 S.E.2d 501 (2010).

**Duration of appointment**

Miss.—*Covington v. Montgomery*, 43 So. 3d 1193 (Miss. Ct. App. 2010).

**Interpretation of assignment order**

An assignment order, under which a visiting judge's authority over a particular case was alleged to have expired, had to be read as a whole, keeping in mind that form should not prevail over substance.

Tex.—*In re Richardson*, 252 S.W.3d 822 (Tex. App. Texarkana 2008).

12 W. Va.—*State ex rel. Ashworth v. Boles*, 148 W. Va. 13, 132 S.E.2d 634 (1963).

**No retroactive power conferred by nunc pro tunc order**

Ga.—*Adams v. Payne*, 219 Ga. 638, 135 S.E.2d 423 (1964).

13 N.M.—*State v. Reed*, 1951-NMSC-021, 55 N.M. 231, 230 P.2d 966 (1951).

Duration of authority, see §§ 369, 370.

**Authority to revisit original judge's rulings in limine**

Ohio—*Schultz v. Duffy*, 2010-Ohio-1750, 2010 WL 1611111 (Ohio Ct. App. 8th Dist. Cuyahoga County 2010).

14 Wash.—*State v. McNairy*, 20 Wash. App. 438, 580 P.2d 650 (Div. 3 1978).

15 Ark.—*Foundation Telecommunications, Inc. v. Moe Studio, Inc.*, 341 Ark. 231, 16 S.W.3d 531 (2000).

16 Ala.—*Trammell v. State*, 785 So. 2d 398 (Ala. Crim. App. 2000).

17 Ky.—*Baze v. Com.*, 276 S.W.3d 761 (Ky. 2008).

18 U.S.—*Romag Fasteners, Inc. v. Fossil, Inc.*, 2013 WL 5782522 (D. Conn. 2013).